

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

HERSHEL RODNEY NUZUM,	)	
	)	8:05cv335
Plaintiff,	)	
	)	MEMORANDUM AND ORDER
vs.	)	
	)	
SUN CHLORELLA,	)	
	)	
Defendant.	)	

This matter is before the court on filing no. 2, the Motion for Leave to Proceed In Forma Pauperis ("IFP") filed by the plaintiff, Hershel Rodney Nuzum, and filing no. 3, the plaintiff's Motion to Stop Action, i.e., to stop the importation into this country of the defendant's product. The defendant manufactures Chlorella tablets.

When considering a motion to proceed IFP, the court must determine whether the moving party qualifies financially and whether the case is frivolous or malicious. See 28 U.S.C. § 1915 (proceedings in forma pauperis). I find that the plaintiff is not financially eligible to proceed IFP. The plaintiff's financial affidavit indicates that he earns approximately \$ 800 per month for part-time employment; that he receives a pension; that he has approximately \$1,000 in cash or savings; and that he owns a vehicle valued at approximately \$8,000. While by no means wealthy, I conclude that the plaintiff has sufficient resources to pay the filing fee without undue hardship. Therefore, I will deny IFP status on the ground that the plaintiff is not financially eligible to proceed IFP.

The plaintiff's Motion to Stop Action is also denied because the motion requests relief before the defendant has even entered an appearance or any evidence has been taken. The motion is premature and may be reasserted at a more appropriate time.

THEREFORE, IT IS ORDERED:

1. That filing no. 2, the plaintiff's Motion for Leave to Proceed In Forma Pauperis, is denied, and the plaintiff shall have until **November 16, 2005**, to pay the full \$250 filing fee;
2. That in the absence of timely payment of the \$250 filing fee, this case will be subject to dismissal without prejudice;

3. That if the filing fee is paid, the court will instruct the plaintiff regarding service of process on the defendant; and

4. That filing no. 3, the plaintiff's Motion to Stop Action, is denied as premature.

DATED this 24<sup>th</sup> day of October, 2005.

BY THE COURT:

s/ F. A. GOSSETT  
United States Magistrate Judge